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UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES ISELEY,

Plaintiff

v.

W. CONWAY BUSHEY, ET AL.,

Defendants

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CIVIL NO. 1:CV-00-0577

(Judge Kane)

FILED
HARRISBURG, PA

SEP 21 2001

ORDER

MARY E. D'ANDREA, CLERK
Per [Signature]
Deputy Clerk

Background

Charles Iseley, an inmate presently confined at the State Correctional Institution, Huntingdon, Pennsylvania (SCI-Huntingdon), initiated this pro se civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that the Defendants, forty-seven (47) state correctional officials, including employees at his prior place of confinement, the Mahanoy State Correctional Institution, Frackville, Pennsylvania (SCI-Mahanoy), have subjected him to retaliation because of his race, Islamic religious beliefs and activities as a jailhouse lawyer.

His complaint lists various purported retaliatory acts, including: denial of permission to attend various prescriptive programs needed to obtain favorable parole recommendation; being subjected to a falsified psychological evaluation and baseless

misconduct charges; loss of institutional employment; suspension of commissary, recreation, showering and shaving privileges; verbal abuse and threats; confiscation of personal property, including private legal materials; denial of a pork free diet; and unfounded disciplinary transfers. Iseley seeks compensatory and punitive damages, as well as injunctive relief.

Presently pending before the Court are plaintiff's motions for a temporary restraining order and/or preliminary injunction. (Doc. Nos. 36, 53). In both motions plaintiff seeks to have his prison file "accurately reflect that the maximum expiration of his term (aggregated sentence) occurred in August, 1999 and to correctly show that plaintiff received 87 years of credit at that time". Plaintiff claims that he is "being held in prison illegally" and that his "maximum sentence expired approximately on July 21, 2000 and that for years [defendants] have refused to acknowledge this despite his numerous communications requesting to do so". Id. Thus, the plaintiff seeks a temporary restraining order "barring defendants from continuing to utilize false information contained in plaintiff's records against him" and to "correct the inaccurate/false data/files/records". Id.

If a plaintiff, although framing his claim in civil rights for injunctive relief, is in reality, attacking the fact or duration

of his confinement, as Iseley is doing in the instant motions for temporary restraining orders, the proper remedy is by way of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973). The accompanying requirement, of course, is that the inmate must first exhaust state judicial remedies. Rose v. Lundy, 455 U.S. 509 (1982); See also 28 U.S.C. § 2254(b) and (c). The burden is on the petitioner to demonstrate that, with regard to the claims he attempts to present to the federal court, he has exhausted his state remedies. Gonce v. Redman, 780 F.2d 333 (3d Cir. 1985), appeal after remand, 845 F.2d 1011 (1988).

Plaintiff has a remedy, in that he is free to file a petition for writ of habeas corpus addressing those issues raised in the instant motions for injunctive relief.

AND NOW, THEREFORE, THIS ^{21ST} DAY OF SEPTEMBER 2001, IT IS HEREBY ORDERED THAT plaintiff's motions for a temporary restraining order and/or preliminary injunction (Doc. Nos. 36 & 53), are dismissed without prejudice as to any right plaintiff has to pursue the claims raised in these motions in a properly filed petition for writ of habeas corpus.



YVETTE KANE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

September 21, 2001

Re: 1:00-cv-00577 Iseley v. Bushey

True and correct copies of the attached were mailed by the clerk
to the following:

Charles Iseley
SCI-Huntingdon
AM-9320
1100 Pike St.
Huntingdon, PA 16654

Maryanne M. Lewis, Esq.
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

cc:

Judge	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>) Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen () DA of County () Respondents ()
Bankruptcy Court	()	
Other _____	()	

MARY E. D'ANDREA, Clerk

9-21-01

